

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

NATHAN JOHNSON,
Plaintiffs,
vs.

BANK OF AMERICA,
Defendant.

GARY D. NITZKIN (P41155)
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COMPLAINT AND JURY DEMAND

NOW COMES THE PLAINTIFF THROUGH COUNSEL, NITZKIN AND ASSOCIATES, BY GARY D. NITZKIN, and for his Complaint against the Defendant, pleads as follows:

1. Jurisdiction of this court arises under 15 U.S.C. §1681p.
2. This is an action brought by consumers for violation of the Fair Credit Reporting Act (15 U.S.C. §1681 et. seq [hereinafter “FCRA”]).
3. Venue is proper before this court pursuant to 28 U.S.C. 1391(b) as the Defendant conducts business in Michigan, has a registered office in Michigan or a substantial part of the events or omissions giving rise to the claims herein occurred in Michigan.

GENERAL ALLEGATIONS

4. Plaintiff owns his home at 3927 Campbell Street in Dearborn Heights, MI.

5. Plaintiff's home is subject to a loan agreement secured by a mortgage in favor of the Defendant.
6. On July 11, 2009, Plaintiff entered into a loan modification agreement ("the Agreement") with the Defendant wherein the parties agreed that the Plaintiff may make small payments on his mortgage loan.
7. The Agreement was effective on September 1, 2009 and required the Plaintiff to make monthly payments of \$864.81 to the Plaintiff.
8. Pursuant to the Agreement, the Plaintiff steadfastly made payments to the Defendant pursuant to the Agreement since August 28, 2009 and has made every payment thereafter timely as well.
9. Despite having made all of these timely payments, the Defendant has reported the Plaintiff as delinquent on his mortgage loan since September of 2009 to all three credit reporting agencies.
10. On June 19, 2010, the Plaintiff posited a consumer dispute to his trade line with Trans Union.
11. Trans Union, upon information and belief, transmitted the Plaintiff's consumer dispute to the Defendant.
12. Defendant failed either negligently or willfully, to conduct a reasonable reinvestigation into the Plaintiff's consumer dispute and instructed Trans Union to confirm the trade line as delinquent.
13. The trade line with all three credit reporting agencies is inaccurate and despite having been notified of such inaccuracies by Trans Union, the Defendant has failed and/or

refused to correct the Plaintiff's trade line resulting in credit denials, embarrassment and humiliation to the Defendant.

COUNT I

NEGLIGENT VIOLATION OF THE FAIR CREDIT REPORTING ACT BY DEFENDANT

14. Plaintiff realleges the above paragraphs as if recited verbatim.
15. After being informed by Trans Union that the Plaintiff disputed the accuracy of the trade line reported by it, the Defendant was required to conduct an investigation into the Plaintiff's consumer dispute.
16. Defendant Bank of America negligently failed to conduct a proper reinvestigation into the Plaintiff's dispute as required by 15 USC 1681s-2(b).
17. Bank of America negligently failed to review all relevant information available to it and provided by Trans Union in conducting its reinvestigations as required by 15 USC 1681s-2(b).
18. Bank of America negligently failed to direct Trans Union to delete the inaccurate information about the Plaintiff pertaining to its trade line as required by 15 USC 1681s-2(b)(1)(c).
19. As a direct and proximate cause of Defendant's negligent failure to perform its duties under the FCRA, the Plaintiff has suffered actual damages, including credit denials and increased costs of credit, mental anguish, suffering, humiliation and embarrassment.
20. Bank of America is liable to the Plaintiffs by reason of its violation of the FCRA in an amount to be determined by the trier of fact together with reasonable attorneys' fees pursuant to 15 USC 1681o.

21. The Plaintiff has a private right of action to assert against the Defendant arising under 15 USC 1681s-2(b).

WHEREFORE, PLAINTIFF PRAYS that this court grant him a judgment against the Defendant for actual damages, costs, interest and attorneys' fees pursuant to 15 U.S.C. 1681o.

COUNT II

WILLFUL VIOLATION OF THE FAIR CREDIT REPORTING ACT BY DEFENDANT

22. Plaintiff realleges the above paragraphs as if recited verbatim.

23. After being informed by Trans Union that the Plaintiff disputed the accuracy of the information it furnished, Defendant willfully failed to conduct a proper reinvestigation of the Plaintiff's dispute.

24. Defendant willfully failed to review all relevant information available to it and provided by Trans Union as required by 15 USC 1681s-2(b).

25. Alternatively, Defendant conducted such a poor reinvestigation as to show a reckless disregard to the Plaintiff's rights under the Fair Credit Reporting Act.

26. Indeed, Bank of America knew at the time that it had received the Plaintiff's consumer disputes that the Plaintiff had faithfully honored all of his obligations under the Agreement.

27. Bank of America willfully failed to direct three of the major credit reporting agencies to delete its wrongfully reported trade lines as required by 15 USC 1681s-2(b).

28. As a direct and proximate cause of Defendant's willful failure to perform its duties under the FCRA, the plaintiff has suffered actual damages, alternatively statutory damages, mental anguish, suffering, humiliation and embarrassment.
29. Bank of America is liable to the Plaintiff for either statutory damages or actual damages he has sustained by reason of its violations of the FCRA in an amount to be determined by the trier of fact, together with an award of punitive damages in the amount to be determined by the trier of fact, as well as for reasonable attorneys fees pursuant to 15 USC 1681n.

WHEREFORE, PLAINTIFF PRAYS that this court grant him a judgment against Bank of America for the greater of statutory or actual damages, plus punitive damages, along with costs, interest and attorneys' fees pursuant to 15 USC 1681n.

JURY DEMAND

Plaintiff hereby demands a trial by Jury.

Respectfully submitted,

October 5, 2010

/s/ Gary D. Nitzkin
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